

Page 1

1 HIGHLY CONFIDENTIAL - PAOLO TONUCCI  
2 UNITED STATES BANKRUPTCY COURT  
3 SOUTHERN DISTRICT OF NEW YORK

4 - - - - -  
5 In Re:

Chapter 11

6  
7 LEHMAN BROTHERS Case No. 08-13555(JMP)  
HOLDINGS, INC. et al., (Jointly Administered)

8  
9 Debtors.

10 - - - - -  
11 HIGHLY CONFIDENTIAL  
12 DEPOSITION OF PAOLO TONUCCI  
13 Friday 14 August 2009  
14 At: 7:00 am

15 Taken at:  
16 Jones Day  
21 Tudor Street  
17 London  
United Kingdom

18  
19 Reported by: AILSA WILLIAMS  
Certified LiveNote Reporter

20  
21  
22  
23  
24  
25

Page 2

1 HIGHLY CONFIDENTIAL - PAOLO TONUCCI

2

A P P E A R A N C E S

3 JONES DAY, LLP

4 Attorneys for Lehman Brothers, Inc.

222 East 41st Street

New York, NY 10017-6702

5 BY: JAYANT W. TAMBE, ESQ

BRIDGET CRAWFORD, ESQ

6

7 BOIES, SCHILLER & FLEXNER, LLP

8 Attorneys for Barclays Capital and the

Witness

5301 Wisconsin Avenue, NW

Washington, DC 20015

9 BY: HAMISH HUME, ESQ.

10 QUINN, EMANUEL, URQUHART, OLIVER & HEDGES,  
LLP

11 Attorneys for the Creditors Committee

865 S. Figueroa Street, 10th Floor

12 Los Angeles, California 90017

13 BY: MATTHEW BUNTING, ESQ.

ERIC TAGGART, ESQ. (By Phone)

14 SIMPSON THACHER & BARTLETT LLP

15 Attorneys for the Witness

425 Lexington Avenue

16 New York, NY 10017-3954

17 BY: CHRISTOPHER J. LUCHT

18 HUGHES, HUBBARD & REED, LLP

19 Attorneys for the SIPA Trustee

One Battery Park Plaza

20 New York, NY 10004-1482

21 BY: WILLIAM R. MAGUIRE, ESQ.

Also Present:

PHILIP E. KRUSE, Alvarez & Marsal

23

24

25

Page 5

1 HIGHLY CONFIDENTIAL - PAOLO TONUCCI

5

2 PAOLO TONUCCI

3 Having been sworn,

4 Testified as follows

5 DIRECT EXAMINATION BY MR. TAMBE:

6 MR. TAMBE : Morning, Mr. Tonucci. We  
7 met this morning. My name is Jay Tambe with Jones  
8 Day, representing the Lehman Brothers Holdings  
9 Estate. I will have counsel introduce themselves  
10 to you and then we will get started.

11 MS CRAWFORD: Bridget Crawford from  
12 Jones Day.

13 MR. MAGUIRE: Bill Maguire, Hughes,  
14 Hubbard & Reed for the Trustee.

15 MR. BUNTING: Matthew Bunting, Quinn,  
16 Emanuel, Urquhart, Oliver & Hedges for the  
17 Creditors Committee and on the phone Erica  
18 Taggart, also Quinn, Emanuel, Urquhart, Oliver &  
19 Hedges.

20 MR. KRUSE: Phil Kruse with Alvarez &  
21 Marsal on behalf of the LBHI Estate.

22 MR. LUCHT: Christopher Lucht, Simpson  
23 Thacher & Bartlett, on behalf of the witness in  
24 his individual capacity.

25 MR. HUME: Hamish Hume from Boies,

Page 6

1 HIGHLY CONFIDENTIAL - PAOLO TONUCCI

6

2 Schiller & Flexner representing Barclays.

3 MR. TAMBE: Erica, can you hear us?

4 MS TAGGART: Yes, thank you.

5 MR. TAMBE: Morning, Mr. Tonucci. By

6 whom are you currently employed?

7 A. Barclays.

8 Q. In what capacity?

9 A. I work in the treasury area.

10 Q. What is your position?

11 A. Head of group balance sheet.

12 Q. And is that head of group balance sheet

13 for global operations?

14 A. That is right, for global operations.

15 Q. How long have you held that position?

16 A. Since February of this year.

17 Q. How long have you been employed by

18 Barclays?

19 A. Since September, 26 September 2008.

20 Q. What was your position at Barclays when

21 you first joined Barclays in September 2008?

22 A. US treasurer for Barclays Capital.

23 [REDACTED]

24 [REDACTED]

25 [REDACTED]

Page 17

1 HIGHLY CONFIDENTIAL - PAOLO TONUCCI

17

2 [REDACTED]

3 [REDACTED]

4 [REDACTED]

5 Q. You used a phrase, "There were changes  
6 in secured funding haircuts", is that right? I  
7 want to understand what you mean by "haircuts"?

8 A. The difference between the market value  
9 and the cash received is known as the haircut in  
10 a secured funding arrangement, the market value of  
11 the securities I should say.

12 [REDACTED]

13 [REDACTED]

14 [REDACTED]

15 A [REDACTED].

16 [REDACTED]

17 [REDACTED]

18 [REDACTED]

19 [REDACTED]

20 [REDACTED]

21 [REDACTED]

22 [REDACTED]

23 [REDACTED]

24 [REDACTED]

25 [REDACTED]

Page 29

1 HIGHLY CONFIDENTIAL - PAOLO TONUCCI

29

2 [REDACTED]

3 [REDACTED]

4 [REDACTED]

5 [REDACTED]

6 [REDACTED]

7 [REDACTED]

8 [REDACTED]

9 [REDACTED]

10 [REDACTED]

11 [REDACTED]

12 [REDACTED]

13 [REDACTED]

14 [REDACTED]

15 [REDACTED]

16 [REDACTED]

17 [REDACTED]

18 [REDACTED]

19 [REDACTED]

20 [REDACTED]

[REDACTED]

22 Q. Let me rephrase. You understood the

23 5 billion dollars all in economic loss versus our

24 marks to be a reference to a discount off the

25 marks, correct?

Page 30

1 HIGHLY CONFIDENTIAL - PAOLO TONUCCI

30

2 A. Yes.

3 Q. The deal that was ultimately done and  
4 closed on September 22, that too included  
5 a discount off of Lehman's marks, correct?

6 A. That is correct.

7 Q. Okay, and the amount of that discount  
8 off of Lehman's marks was about \$5 billion, is  
9 that right?

10 MR. HUME: Objection, lacks foundation.

11 A. It is uncertain, because obviously there  
12 were a lot of valuation movements and so  
13 I couldn't say with certainty, but certainly what  
14 I can say is versus the valuations that I recall  
15 seeing from our analysis it was about that number.

16 Q. About \$5 billion?

17 A. About \$5 billion.

18 [REDACTED]

19 [REDACTED]

20 [REDACTED]

21 [REDACTED]

22 [REDACTED]

23 [REDACTED]

24 [REDACTED]

25 [REDACTED]

Page 32

1 HIGHLY CONFIDENTIAL - PAOLO TONUCCI

32

2 [REDACTED]

3 [REDACTED]

4 Q. How did Barclays get the  
5 5 billion-dollar discount?

6 A. Right. I think what was contemplated in  
7 the negotiation, and what was executed in terms of  
8 the settlement probably differed slightly, you  
9 know, and involved over the week the settlement of  
10 the transaction, meaning the actual transfer of  
11 securities and cash was through the repo  
12 agreements, and essentially the termination of  
13 those repo agreements.

14 Q. Was the discount given to Barclays by  
15 defaulting on the repo?

16 MR. HUME: Objection. You are asking  
17 the witness very general questions about  
18 a complicated transaction without walking him  
19 through any of the details of that transaction. I  
20 think the line of questioning lacks foundation.

21 MR. TAMBE: You have an objection to  
22 form, right, Hamish? So noted. Answer the  
23 question, please.

24 MR. HUME: I think the line of  
25 questioning is calling for speculation and lacks

Page 33

1 HIGHLY CONFIDENTIAL - PAOLO TONUCCI

33

2 foundation.

3 MR. TAMBE: Do you remember my question?

4 Probably not. Do you want it read back?

5 A. Yes, please.

6 (Read back)

7 A. Yes, I would say that was the way in

8 which the transaction was settled, so that is

9 fair.

10 - [REDACTED] - [REDACTED]

11 [REDACTED] [REDACTED]

12 [REDACTED]

13 [REDACTED] [REDACTED] ?

14 N [REDACTED]

15 [REDACTED]

16 [REDACTED]

17 [REDACTED]

18 [REDACTED].

19 [REDACTED]

20 [REDACTED]

21 [REDACTED]

22 [REDACTED]

23 [REDACTED]

24 [REDACTED]

25 [REDACTED]

Page 36

1 HIGHLY CONFIDENTIAL - PAOLO TONUCCI

36

2 [REDACTED]  
3 [REDACTED]  
4 [REDACTED]  
5 [REDACTED]  
6 [REDACTED] difference [REDACTED]  
7 [REDACTED]  
8 [REDACTED]  
9 [REDACTED]  
10 [REDACTED]  
11 [REDACTED]  
12 [REDACTED]  
13 A [REDACTED]  
14 [REDACTED]  
15 [REDACTED]  
16 [REDACTED]  
17 Q. [REDACTED] [REDACTED]  
18 [REDACTED]  
19 [REDACTED]  
20 [REDACTED]  
21 [REDACTED]  
22 [REDACTED]

23 Q. Tell me briefly what the changes were,  
24 if any, in the size of the Fed repo from Monday to  
25 Tuesday to later in the week?

Page 37

1 HIGHLY CONFIDENTIAL - PAOLO TONUCCI

37

2 A. I can't recall the exact details. I  
3 recall that the Barclays repo on the -- again, I  
4 am not certain about this but the Barclays repo on  
5 the 16th, I believe, was for \$5 billion. On the  
6 17th I believe it was for \$8 billion and then on  
7 the Thursday there was obviously a much bigger  
8 transaction and so that changed the Fed repo,  
9 which became zero.

10 Q. Let's talk about that bigger transaction  
11 on Thursday, okay. Describe for me how the Fed  
12 repo went to zero and what happened with the  
13 Barclays repo on Thursday?

14 A. It is difficult for me to talk about the  
15 mechanics because I am not that close to the  
16 operational mechanics of the repo being unwound,  
17 but my understanding was that the repo unwound on  
18 the Thursday morning, which would be typical in  
19 a tri-party repo, that an overnight repo would  
20 unwind, you would return the collateral and the  
21 cash and the transactions would then settle with  
22 that collateral that was released, and at the end  
23 of the day a new financing transaction would be  
24 settled.

25 In this instance there was complexity because

Page 38

1 HIGHLY CONFIDENTIAL - PAOLO TONUCCI

38

2 JP Morgan was the tri-party agent for Lehman and had been  
3 the tri-party agent in the transaction with the Fed. BONY  
4 was the tri-party agent for Barclays and so there was a need  
5 to transfer collateral from JP Morgan to Bank of New York  
6 tri-party system, and I am not sure about the mechanics  
7 involved in that transfer but it was clearly a more  
8 complicated transaction than if the financing had just been  
9 through the JP Morgan tri-party system.

10 Q. Is it your understanding that on  
11 Thursday, in this bigger transaction on Thursday,  
12 Barclays effectively replaced the Fed and the Fed  
13 funding transaction?

14 A. I was not involved in the discussions  
15 with Barclays or with the Fed on the removal or  
16 replacement of the Fed in that transaction, so I  
17 can't really talk to the specifics, but my  
18 understanding was that the Fed transaction was  
19 going to mature on the Thursday and they were not  
20 really providing any financing subsequently.

21 Q. Wednesday night into Thursday, do you  
22 recall the size of the Fed funding being  
23 approximately \$45 billion?

24 A. Yes, that sounds about right.

25 Q. And the Fed was holding approximately

Page 39

1 HIGHLY CONFIDENTIAL - PAOLO TONUCCI

39

2 \$50 billion in collateral against that financing?

3 A. That sounds right.

4 Q. And the big transaction that you  
5 described on Thursday effectively had Barclays  
6 coming in and putting in \$45 billion to pay off  
7 the Fed repo, correct?

8 A. I understood that they were going to be  
9 putting in 45, that it was going to be  
10 a 45 billion-dollar transaction, yes.

11 Q. And all the collateral that was being  
12 held by the Fed was then going to be transferred  
13 to Barclays, correct?

14 MR. HUME: Objection, asked and  
15 answered. He has already explained.

16 A. To be honest, I was not close enough to  
17 the actual transaction that was being booked to  
18 know exactly where all the collateral was going to  
19 end up, nor was I close enough to any agreements  
20 with Barclays or with the Fed as to where all of  
21 the collateral was going to end up.

22 Q. So effectively on Thursday the Fed  
23 funding goes down to zero, correct?

24 A. That is correct.

25 Q. And they exit the financing picture at

Page 40

1 HIGHLY CONFIDENTIAL - PAOLO TONUCCI

40

2 that point?

3 A. That is correct.

4 Q. And what you have left is the Barclays  
5 repo, correct?

6 A. That is correct.

7 Q. Describe for me what happens with the  
8 Barclays repo over the next few business dates?

9 We are now into Thursday on to Friday the 19th.

10 MR. HUME: Again, objection to the form  
11 of the question and the lack of foundation.

12 A. That transaction happened on Thursday.

13 That was essentially the last of that transaction  
14 in the way that I think about it. It was executed  
15 on Thursday night and settled Thursday night into  
16 Friday morning and that was the end of that  
17 transaction. After that it was just a matter of  
18 that transaction terminating and the collateral  
19 being rebooked as a purchase by Barclays and as  
20 a sale by Lehman.

21 [REDACTED]

22 [REDACTED]

23 [REDACTED]

24 Q. The [REDACTED] generally.

25 [REDACTED]

Page 54

1 HIGHLY CONFIDENTIAL - PAOLO TONUCCI

54

2 [REDACTED]

3 [REDACTED]

4 [REDACTED]

5 [REDACTED]

6 [REDACTED]

7 [REDACTED]

8 [REDACTED]

9 [REDACTED] the

10 [REDACTED] elimination of G.I. 11

11 [REDACTED] G.I. 12

12 [REDACTED]

13 [REDACTED]

14 [REDACTED] So this was

15 [REDACTED] the element collateral that I

16 [REDACTED] posted [REDACTED] under the summary

17 [REDACTED]

18 [REDACTED]

19 [REDACTED] So this is your recollection

20 [REDACTED]

21 [REDACTED]

22 [REDACTED]

23 [REDACTED]

24 Q. And do you recall there being an effort  
25 on September 19 to find additional collateral for

Page 55

1 HIGHLY CONFIDENTIAL - PAOLO TONUCCI

55

2 Barclays?

3 A. I do.

4 Q. What can you tell us about the efforts  
5 to find additional collateral for Barclays?

6 A. That we were asked on the morning of the  
7 19th to find if there was additional collateral to  
8 include in the transaction.

9 Q. Asked by whom?

10 A. I believe I was asked by Ian Lowitt.

11 Q. Did Ian Lowitt tell you why he was  
12 asking you to find additional collateral?

13 A. He said that it was necessary for the  
14 transaction to close and he reiterated that  
15 through the day.

16 [REDACTED]

17 [REDACTED] other collections of assets that were

18 [REDACTED]

19 [REDACTED]

20 [REDACTED]

21 [REDACTED]

22 [REDACTED] receivables that were

23 [REDACTED]

24 [REDACTED]

25 [REDACTED]

Page 125

1

HIGHLY CONFIDENTIAL - PAOLO TONUCCI

125

2

3

4

5

6

7

8

9

10

11 Q. You have a second item: "Their opening  
12 balance sheet should also include 1.9 billion of  
13 box assets". Correct?

14 A. Correct.

15 Q. What is that a reference to?

16 A. The unencumbered collateral.

17 Q. Schedule B?

18 A. Which became Schedule B.

19

20

21

22

23

24

25

Page 132

1 HIGHLY CONFIDENTIAL - PAOLO TONUCCI

132

2 [REDACTED]

3 [REDACTED] detailed

4 [REDACTED] fined what he [REDACTED]

5 [REDACTED] prepared, [REDACTED] by [REDACTED]

6 [REDACTED]

7 [REDACTED]

8 [REDACTED]

9 [REDACTED]

10 [REDACTED]

11 [REDACTED]

12 [REDACTED] moment we [REDACTED] C-mail [REDACTED]

13 [REDACTED]

14 A [REDACTED]

15 [REDACTED] bottom

16 [REDACTED] ball

17 [REDACTED]

18 [REDACTED]

19 [REDACTED]

20 [REDACTED]

[REDACTED]

23 Q. The third item reads: "Not clear on the

24 amount of blocked discount or how we make it

25 happen." Do you see that?

Page 133

1 HIGHLY CONFIDENTIAL - PAOLO TONUCCI

133

2 A. Yes.

3 Q. And you understand that to be  
4 a reference to the 5 billion-dollar discount that  
5 we talked about earlier?

6 MR. HUME: Objection, lacks foundation.

7 A. I understand it to be a reference to the  
8 discount on purchase, so I would have linked it to  
9 that \$5 billion.

10 Q. Then the next sentence reads:

11 "Defaulting on repo could be the best as  
12 discounts could be taken from the haircut."

13 Do you see that?

14 A. Yes.

15 Q. Do you remember discussing with anyone  
16 at Lehman defaulting on the repo as a way of  
17 providing the discount to Barclays?

18 A. Yes.

19 Q. With whom did you discuss that?

20 A. I think it was with Ian and with Gerry,  
21 perhaps Martin Kelly as well.

22 [REDACTED]

23 [REDACTED]

24 [REDACTED]

25 [REDACTED]

Page 142

1 HIGHLY CONFIDENTIAL - PAOLO TONUCCI

142

2 [REDACTED]  
3 [REDACTED]  
4 [REDACTED]  
5 [REDACTED] ?  
6 [REDACTED]  
7 [REDACTED]  
8 [REDACTED]  
9 [REDACTED]  
10 [REDACTED]  
11 [REDACTED]  
12 [REDACTED]  
13 [REDACTED]  
14 [REDACTED]  
15 [REDACTED]  
16 [REDACTED]  
17 [REDACTED]  
18 [REDACTED]  
19 [REDACTED]  
20 [REDACTED]  
21 [REDACTED]  
22 [REDACTED]

23 Q. And your understanding was that  
24 a default on the repo really converted what was a  
25 two-leg transaction; the repurchase leg would go

Page 143

1 HIGHLY CONFIDENTIAL - PAOLO TONUCCI

143

2 away and there would effectively be a sale of the  
3 asset?

4 MR. HUME: Objection.

5 A. That is correct. It would become  
6 a sale.

7 [REDACTED]  
8 [REDACTED]  
9 [REDACTED]  
10 [REDACTED]  
11 [REDACTED]  
12 [REDACTED]  
13 [REDACTED]  
14 [REDACTED]  
15 [REDACTED]  
16 [REDACTED]  
17 [REDACTED]  
18 [REDACTED]  
19 [REDACTED]  
20 [REDACTED]  
21 [REDACTED]  
22 [REDACTED]  
23 [REDACTED]  
24 [REDACTED]  
25 [REDACTED]

Page 146

1 HIGHLY CONFIDENTIAL - PAOLO TONUCCI

146

2 [REDACTED]  
3 [REDACTED]  
4 [REDACTED]  
5 [REDACTED]  
6 [REDACTED]  
7 [REDACTED]  
8 [REDACTED]  
9 [REDACTED]  
10 [REDACTED] question?

11 Q. I have talked about the components at  
12 least that you have in your e-mail, where you  
13 recap the opening balance sheet, right, you have  
14 the repo component and then you have 1.9 billion  
15 for what we have talked about, became Schedule B,  
16 and then you had another billion dollars of the  
17 15c3 receivables?

18 A. That is correct.

19 Q. And the 1.9 and the 1 is about  
20 \$2.9 billion, right?

21 A. That is correct.

22 Q. And that was additional value over and  
23 above the repo, correct?

24 MR. HUME: Objection.

25 A. Additional assets over and above the

Page 147

1 HIGHLY CONFIDENTIAL - PAOLO TONUCCI 147

2 repo assets that were transferred on the Thursday  
3 night.

4 [REDACTED]  
5 [REDACTED]  
6 [REDACTED] Mondays to 31 August  
7 [REDACTED]  
8 [REDACTED]  
9 [REDACTED]  
10 [REDACTED]  
11 [REDACTED] Tuesday and  
12 [REDACTED]  
13 [REDACTED]  
14 [REDACTED]  
15 [REDACTED]  
16 [REDACTED]  
17 [REDACTED]  
18 [REDACTED]  
19 [REDACTED]  
20 [REDACTED]  
21 [REDACTED]  
22 [REDACTED]  
23 [REDACTED]  
24 [REDACTED]  
25 [REDACTED]